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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

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8 NICHOLAS OLIVA; JOAN OLIVA,  
9 individuals,

10 Plaintiffs,

11 vs.

12 NATIONAL CITY CORPORATION;  
13 NATIONAL CITY MORTGAGE  
14 COMPANY; NATIONAL CITY  
15 BANK OF INDIANA; MICHAEL  
16 DEMING, individually and as an  
employee/agent of National City;  
17 VIVIAN FURLOW, individually and  
as an employee/agent of National City,  
18

19 Defendants.

2:08-CV-01559- PMP-LRL

**ORDER**

20 On July 2, 2010, the following motions came on for hearing before the  
21 Court:

- 22 1. Defendants' Motion in Limine (Doc. #43);  
23 2. Defendants' Motion to Dismiss for Failure to Comply  
with FRCP 26(a) (Doc. #44);  
24 3. Defendants' Motion for Summary Judgment (Doc.  
#45); and  
25 4. Plaintiffs' Request for Review of Magistrate's Order  
Granting Defendants' Motion to Strike Plaintiffs' Expert,  
Ian Hirsch, and Denying Plaintiffs' Motion to Compel  
26 Discovery Responses and to Reopen Discovery (Doc. #62)

1           Having considered the arguments of counsel presented, the Court hereby  
2 finds as follows:

3           The Order of Magistrate Judge Leavitt (Doc. #60) granting Defendants'  
4 Motion to Strike Plaintiffs' Expert Ian Hirsch, and denying Plaintiffs' Motion to  
5 Compel Discovery Responses and to Reopen Discovery (Doc. #62) is not, under the  
6 circumstances presented before the Magistrate Judge, clearly erroneous or contrary  
7 to law.

8           **IT IS THEREFORE ORDERED** that Plaintiffs' Request for Review of  
9 Magistrate's Order Granting Defendants' Motion to Strike Plaintiffs' Expert, Ian  
10 Hirsch, and Denying Plaintiffs' Motion to Compel Discovery Responses and to  
11 Reopen Discovery (Doc. #62) is **DENIED**, and the Order (Doc. #60) entered by  
12 Magistrate Judge Leavitt is hereby affirmed.

13           As to Defendants' Motion to Dismiss for Failure to Comply with FRCP  
14 26(a) (Doc. #44), the Court finds that although Plaintiffs have failed to fully comply  
15 with the Rule's requirements, dismissal of Plaintiffs' Complaint is not warranted.

16           **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss for  
17 Failure to Comply with FRCP 26(a) (Doc. #44) is **DENIED**.

18           **IT IS FURTHER ORDERED** that Plaintiffs' shall, not later than **August**  
19 **6, 2010**, produce for Defendants all documents upon which Plaintiffs rely upon to  
20 support their claims for damages.

21           **IT IS FURTHER ORDERED** that with respect to Defendants' Motion for  
22 Summary Judgment (Doc. #45), the Court finds it appropriate to grant Plaintiffs  
23 limited relief in the form of 60 additional days for purposes of conducting discovery  
24 pursuant to Rule 56(f). Specifically, the Court finds it appropriate to require that  
25 Defendants produce for inspection and copying by Plaintiffs documents in  
26 Defendants' possession reflecting the published interest rates for the relevant time

1 period for both seven-year and three-year adjustable rate mortgages, as previously  
2 requested by Plaintiffs. Plaintiffs and Defendants thereafter shall conduct any  
3 additional depositions necessary to complete discovery on the issue of whether  
4 between May 2005 and May 2008, Plaintiffs paid monthly interest rates consistent  
5 with a seven-year adjustable rate mortgage rather than a three-year adjustable rate  
6 mortgage. Such discovery shall be completed within 60 days from the date of this  
7 Order.

8 **IT IS FURTHER ORDERED** that Defendants' Motion for Summary  
9 Judgment (Doc. #45) is **DENIED** without prejudice to renew the same following  
10 completion of the above referenced discovery permitted in accord with Rule 56(f).

11 **IT IS FURTHER ORDERED** that Defendants' Motion in Limine (Doc.  
12 #43) is **DENIED** without prejudice to renew the same at least 45 days prior to the  
13 commencement of trial in this case.

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15 DATED: July 7, 2010.

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18 PHILIP M. PRO  
19 United States District Judge  
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